IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4962 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

S.J.PATEL - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR JS BRAHMBHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/08/2005

ORAL JUDGMENT

Rule. By way of this petition under Article 226/227 of the Constitution of India, the petitioner, Gujarat State Road Transport Corporation (GSRTC) has challenged the legality and validity of the judgment and award passed by the Industrial Tribunal,

Vadodara, dated 3.2.2004 in Reference (IT) No. 232 of 1998 in partly allowing the same and interfering with the order of punishment imposed by the disciplinary authority, and imposing the punishment of withholding of two yearly increments with permanent future effect instead of putting the respondent workman to 5 stages lower.

2. The respondent workman was serving as a Conductor with the GSRTC and while he was on duty on 8.9.1995 it was found by the Checking Squad that the respondent conductor had collected Rs. 44 from a group of 4 passengers but had issued tickets worth Rs. 6.50 only and misappropriated an amount of Rs. 37.50 ps. and discrepancies were also found in the cash. After holding departmental enquiry, the petitioner Corporation by order dated 11.7.1997 reduced the workman to 5 stages from the basic pay-scale of the conductor. The respondent workman raised an industrial dispute which was referred to the Industrial Tribunal, Vadodara, for adjudication being Reference (IT) No. 232 of 1998, and the Industrial Tribunal, while exercising power under Section 11A of the Industrial Disputes Act, 1947, interfered with the order of punishment imposed by the disciplinary authority, and instead of reducing the workman to 5 stages from the basic pay-scale of the conductor, the Tribunal imposed punishment of withholding of 2 increments with permanent future effect only. Being aggrieved and dissatisfied with

the judgment and award passed by the Industrial Tribunal, Vadodara in Reference (IT) No. 232 of 1998, the petitioner Corporation has preferred the present petition under Article 226/227 of the Constitution of India.

3. Shri Hardik Raval, learned advocate appearing for the petitioner has vehemently submitted that when the Tribunal has specifically come to the conclusion that the findings of the Enquiry Officer are just and proper and not perverse, and inspite of the fact that there is no specific finding given by the Industrial Tribunal that the punishment imposed by the disciplinary authority is disproportionate and/or shockingly disproportionate the Tribunal was not justified in exercising power under Section 11A of the I.D. Act and ought not to have interfered with the order of punishment imposed by the authority. It is therefore requested to allow the present Special Civil Application.

4. Per contra, Shri Brahmbhatt, learned advocate appearing for the respondent has tried to support the judgment and award passed by the Industrial Tribunal. He has even tried to submit that the finding given by the Tribunal is not correct, however, in view of the fact that the respondent has not challenged the same by way of Special Civil Application it is not open for the respondent now to contend that the finding given by

the Tribunal is not correct. He has further submitted that considering the fact that the service tenure of respondent workman was 14 years and that the past service record of the workman has not been produced the Industrial Tribunal has thought it fit to give some benefit of doubt and accordingly interfered with the order of punishment by imposing some lesser punishment which is not required to be interfered with by this Court exercising power under Article 226/227 of the Constitution of India. It is, therefore, requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. It is required to be noted that the charges of misappropriation and issuance of less tickets and possessing excess amount with the respondent workman have been held to be proved against the workman and even the Industrial Tribunal in its impugned judgment has specifically held that the findings of the Enquiry Officer are not perverse and are just. Inspite of the aforesaid findings, the Industrial Tribunal interfered with the order of punishment imposed by the authority. It is required to be noted that the Disciplinary Authority had imposed the punishment of reducing the respondent workman to 5 stages down from the basic pay-scale only. As held by the Hon'ble Supreme Court as well as this Court in catena of judgments, unless it is found by the Labour Court and/or Industrial Tribunal

that the order of punishment imposed by the disciplinary authority is found to be shockingly disproportionate, then and then only the Labour Court and/or the Industrial Tribunal is required to exercise the power under Section 11-A of the Industrial Disputes Act. In the present case, there is no such finding given by the Tribunal that the punishment imposed by the authority is disproportionate or shockingly disproportionate. Under the circumstanced, the Tribunal was not justified in interfering with the order of punishment imposed by the disciplinary authority. From the reasoning, it appears that, what was weighed with the Industrial Tribunal was that the respondent workman had 14 years of service and that the past service record of the respondent workman was not produced and therefore it is presumed that the service record of the respondent workman is clean. It is required to be noted that when it is specifically held by the disciplinary authority as well as the Industrial Tribunal that the charges of misappropriation and find of more cash with the respondent workman have been held to be proved, other things are not required to be considered at all. Looking to the facts and circumstances, even the punishment imposed by the disciplinary authority is on a lower side. The exercise of power by the Industrial Tribunal under Section 11-A of the I.D. Act in the facts and circumstances of the case was not warranted at all and it can be safely said that the Industrial Tribunal has not exercised its power judiciously.

Under the circumstances, the judgment and award passed by the Industrial Tribunal is required to be quashed and set aside.

6. For the reasons stated above, the petition succeeds. The judgment and award passed by the Industrial Tribunal, Vadodara, dated 3.2.2004 in Reference (IT) No. 232/1998 is hereby quashed and set aside and the order of punishment imposed by the disciplinary authority is hereby restored. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.